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COLE'S EX'OR V. MARTIN.—Decided at Richmond, February 12, 1901.—*Cardwell, J.* Absent, *Phlegar, J.*:

1. CHANCERY PRACTICE—*Statute of limitations—Issue—Exceptions.* The defence of the statute of limitations to a claim asserted before a commissioner in chancery may be made by an acceptance to the commissioner's report. The mere fact that, subsequently, the claimant asserts his claim by a petition filed in the cause, upon which no process issues, does not render it necessary to make the issue of the bar of the statute again.

2. STATUTE OF LIMITATIONS—*New promise—Admission in will—Promise to account—Several debts.* A letter asking for an account and promising to pay it, will not be held to apply to old accounts, the last items of which are from seven to fifteen years' standing, and which are subject to sundry payments and set-offs, leaving uncertain and unascertainable balances when the writer owes the promisee an account then current, and another of recent date; nor will a clause in a will of the debtor admitting a debt be held to apply to such old accounts, but both letter and will will be deemed to be applicable only to the current account and the one of recent date.

3. STATUTE OF LIMITATIONS—*New promise—Uncertain amount—Extrinsic evidence.* When there is a promise to pay, not specifying any amount, but which can be made certain as to the amount, extrinsic evidence may be received to ascertain the amount due. It is sufficient if the true amount is capable of being made certain.

STATUTE OF LIMITATIONS—*New promise—Admission—Case in judgment.* A new promise to remove the bar of the statute of limitations must be determinate and unequivocal; and to imply a promise of payment from a subsequent acknowledgment, such acknowledgment must be an unqualified admission of a subsisting debt which the party is liable for and willing to pay. In the case in judgment, the promise to pay does not sufficiently identify the debt intended to be paid.

JONES V. TUNIS.—Decided at Richmond, February 12, 1901.—*Phlegar, J.* Absent, *Keith, P.*:

1. SPECIFIC PERFORMANCE—*Inability to perform.* The absolute inability of a defendant to perform his contract at all when called upon by the court to do so, prevents a decree for specific performance, even though the defendant intentionally rendered himself unable to perform.

2. SPECIFIC PERFORMANCE—*Inability to perform—Damages—Adequate remedy at law.* When a contract is clearly proved, and the only objection to a decree for specific performance is the defendant's inability to perform, a court of equity will usually ascertain and decree the damages to which the complainant is entitled by reason of defendant's breach, in order to do complete justice and prevent a multiplicity of suits. But where the plaintiff knew when he sued that specific performance was impossible, no recovery of damages can be had, as the complainant has as complete a remedy at law as a court of chancery could give him.

BRESEE V. BRADFIELD.—Decided at Richmond, March 14, 1901.—*Keith, P.* Absent, *Whittle, J.*:

1. CHANCERY PRACTICE—*Reference for account—Reference to take evidence.* Where, from the nature of the case and of the relief sought, an account is neces-

sary to enable the court to do justice between the parties, an order of reference will not be entered until its propriety has been made to appear by the evidence; and if such a case be submitted upon the bill without proof and an answer denying its allegations, it should be dismissed; but where there is nothing in the pleadings and proofs to make an account proper and necessary, and the court has improvidently granted an order of reference, it is harmless error, for which the cause should not be reversed.

2. CHANCERY PRACTICE—*Estimates of values—General average of values.* All estimates of values are uncertain, and where the credibility and integrity of the witnesses are unimpeached, and none of them enjoy peculiar opportunities or advantages in forming their estimate, it is not error to take the average estimate of all of them.

3. TRUSTS AND TRUSTEES—*Trustee-purchaser—Voidable sale—Rights of creditors.* A trustee cannot purchase the trust-subject from the beneficiary, regardless of the question of good or bad faith in the premises. The transaction, however, is not void, but voidable only, but only voidable at the instance of the beneficiary. The privilege of avoidance does not extend to the creditors of the beneficiary, though the relations of the parties may be considered in determining the question of actual fraud raised by creditors of the beneficiary.

4. CHANCERY PRACTICE—*Cancellation—Inadequacy of price.* Mere inadequacy of price, if so gross as to shock the conscience and furnish satisfactory and decisive evidence of fraud, is sufficient ground for cancelling a conveyance or contract.

5. CHANCERY PRACTICE—*Cancellation—Bad faith and inadequacy.* Bad faith, undue advantage taken, or oppression exercised, or undue influence exerted, coupled with inadequacy of price, will induce a court of equity to grant relief, defensive or affirmative.

HUGHES V. WILLIAMS.—Decided at Richmond, March 14, 1901.—

Curdwell, J. Absent, Whittle, J:

1. TRUSTS AND TRUSTEES—*Discretionary trust—Imperative power.* A trust cannot be said to be discretionary which requires the trustee to provide and supply all necessary provisions and supplies for the grantor and his minor children, and creates a charge therefor on the corpus of the estate granted. Supplies furnished by a stranger to the grantor and his minor children would have become a charge upon the trust property had the trustee declined to execute the trust. The power conferred was imperative, and if not exercised by the trustee, a court of equity had jurisdiction to carry it into execution.

2. TRUSTS AND TRUSTEES—*Care required of trustee.* The trustee in a deed of trust containing such powers and authority as above stated is held to the same degree of prudence and care as a reasonably prudent and careful man would exercise in the conduct of his own affairs under like circumstances.

3. TRUSTS AND TRUSTEES—*Expenditure of corpus.* Under the terms of the above trust, the trustee had the right to charge the *corpus* of the trust subject with the necessary support of the grantor and his minor children, and having in good faith expended more than the full value thereof in a manner fully authorized by the provisions of the deed, there is nothing left for division among the heirs of the grantor.